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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JEREMY MEYERS,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

Case No. C08-5773 FDB/KLS

ORDER TO AMEND PETITION

This habeas corpus petition was re-referred to United States Magistrate Judge Karen L. Strombom following entry of the District Court's Order adopting the Report and Recommendation (Dkt. 6) and payment of the \$5.00 filing fee by Petitioner. (Receipt # T-522). Although Petitioner has paid the filing fee, he has not yet amended his petition to name the correct Respondent as he was ordered to do. Dkt. # 6.

In its Report and Recommendation of February 10, 2009, the Court noted that Mr. Meyers has failed to name the correct Respondent, thereby depriving this Court of personal jurisdiction. Dkt. # 4, p. 2 citing *United States v. Giddings*, 740 F.2d 770, 772 (9th Cir. 1984). 28 U.S.C. § 2243 requires that writs are to be directed "to the person having custody of the person detained." The

1 proper respondent in a federal habeas corpus petition is the petitioner's "immediate custodian."
2 *Demjanjuk v. Meese*, 784 F.2d 1114, 1115 (D.C.Cir. 1986). A custodian "is the person having a
3 day-to-day control over the prisoner. That person is the only one who can produce 'the body' of the
4 petitioner." *Guerra v. Meese*, 786 F.2d 414, 416 (D.C.Cir. 1986). Therefore, Mr. Meyers'
5 custodian for purposes of his habeas corpus petition challenging the execution of his Washington
6 state sentence, is the warden of the prison where he is currently confined. *See, e.g., Brittingham v.*
7 *United States*, 982 F.2d 378 (9th Cir. 1992); *Dunne v. Henman*, 875 F.2d 244, 249 (9th Cir. 1989).

8 The Order adopting this Court's Report and Recommendation was sent to Mr. Meyers on
9 March 18, 2009, advising Mr. Meyers that he must pay the \$5.00 filing fee and amend his petition
10 to properly name his custodian within thirty days from March 12, 2009. Dkt. 6. Prior to entry of
11 that Order, on March 6, 2009, Mr. Meyers paid the \$5.00 filing fee (Receipt No. T-5200). However,
12 to date, he has not amended his petition to name his immediate custodian as ordered.

13 Accordingly, it is **ORDERED**:

- 14 (1) Mr. Meyers shall amend his petition to name his immediate custodian and warden
15 and shall provide the Court with two copies of the first page of the Petition reflecting
16 the properly named Respondent for service **on or before June 12, 2009**.
17 (2) The Court Clerk is directed to send a copy of this Order and a form 28 U.S.C. § 2254
18 petition to Mr. Meyers, and to note this matter for the Court's **June 12, 2009**
19 calendar.
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21 DATED this 12th day of May, 2009.
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24 Karen L. Strombom
25 United States Magistrate Judge
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